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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,654	06/27/2003	Kevin James Curie	24180-715000	2628

7590 11/02/2006

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EXAMINER
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TARAZANO, DONALD LAWRENCE

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/607,654

Applicant(s)

CURIE ET AL.

Examiner

D. Lawrence Tarazano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 05/09/2005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 05/09/2005 has been entered.

### ***Information Disclosure Statement***

2. The examiner reviewed the copies of the references provided. Attached is a copy of the signed PTO-1449.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 21-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. It is unclear how the applicants are calculating the amount of "adhesive", for example one could look to the amount of graft modified polymer is the adhesive or one could be looking to just the active moiety grafted to it. This becomes very confusing in claims 23, 31, 41 as the

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claims recite different ways of calculating the "adhesive" component. For this reason, it is unclear how the amount of adhesive is calculated and what is required to meet the limitations of the claimed invention.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 21-25, 27-33, 35-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsai et al. (WO 97/4746).

Tsai et al. teach multilayer structures comprising polyolefin surface layers and a barrier layer between them. The invention lies in the addition of graft-modified resins in the surface layers of the film to improve adhesion and eliminate the need for intermediate adhesive layers. The surface layers can be made of materials such as polypropylene (page 9, lines 19+), and the core layer is made of materials such as nylon 6 and 66 (page 7, lines 9+).

Prior art calculates the amount of adhesive based on the amount of graft-modified resin added. If one were to look at only the amount of grafted material, this value would be considerably lower by percentage. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have varied the amount of "maleic acid" added to the polypropylene material depending on the amount of adhesion desired, this would be a rate effective variable. The thickness of the structure would be directly related to the end use of the

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films. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have optimized the thickness of the films based on the use of the structure.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used conventional additives such as Cobalt metal for their known and expected function.

The haze value claimed would be inherent to the materials used.

8. Claim 26, 34, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsai et al. (WO 97/4746) as applied to claims 21-25, 27-33, 35-41 above, and further in view of Newsome et al. (4,557,780).

9. Newsome et al. teaches that barrier layers can be made of alone EVOH alone or in blends with nylon. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used blends of EVOH and nylon, or EVOH in the structures taught by Tsai et al. as Newsome et al. show that they are functionally equivalent.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Lawrence Tarazano whose telephone number is (571)-272-1515. The examiner can normally be reached on 8:30 to 6:00 (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571)-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

D. Lawrence Tarazano  
Primary Examiner  
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A handwritten signature in dark ink, appearing to be 'D/L' or similar, located below the printed name of the examiner.